

UPDATE

News of Developments in the Financial Sector and Related Areas

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"Bank Space for Lease"

"Bank Space for Lease" is an advertisement by Wal-Mart Stores, Inc. seeking to attract financial institutions into leasing space in Wal-Mart Stores across the country. The advertisement invites financial institutions to join the hundreds of banks currently leasing space from Wal-Mart with Wal-Mart customers becoming customers of the financial institution.

Legal Advisers Ranking

In a recent national survey of legal advisers in domestic bank and thrift mergers announced in the year 2005, ranked by number of mergers, **Dover Dixon Horne PLLC**, Little Rock, Arkansas, was ranked 28th in the nation.

Real Estate Activities of Financial Holding Companies

In connection with the proposed rule that would have permitted real estate brokerage

and management activities for financial holding companies, their subsidiaries and subsidiaries of national banks, the United States Congress has continued to bar the Federal Reserve Board and the Treasury Department from taking action to finalize the proposed rule. The proposed rule would have permitted financial holding companies and financial subsidiaries to provide real estate brokerage and management services including, among other things, acting as agent for a buyer, seller, lessor or lessee of real estate; listing and advertising real estate; providing advice in connection with real estate transactions; and providing real estate management services including procuring tenants, negotiating leases, and generally overseeing the inspection, maintenance and upkeep of real estate. The National Association of Realtors, which has thus far been successful since 2001 in its efforts to lobby Congress, opposes the proposed rule and takes the position that real estate brokerage is a commercial and not a financial activity, and the proposed rule would allow financial holding companies and financial subsidiaries to buy up the large brokerage firms and force the closure of smaller brokers who are unable to compete with the financial resources of banking entities. Proposed legislation has been introduced from time to time in both the United States Senate and the House of Representatives which would bar banks from such activities and which would prevent federal regulators from finalizing the proposed rule allowing banking companies into the real estate business. The Office of the Comptroller of the Currency ("OCC") has issued a number of Interpretive Letter rulings regarding the

activities of national banks in the real estate sector.

- Interpretive Letter #1034 — Permitted a national bank to replace its existing branch with an office complex and lease the unused portion of the complex to other businesses. The bank would initially utilize approximately 22 percent of the bank complex for its banking business with the use by the bank possibly declining to approximately 11 percent of the total space in the complex.
- Interpretive Letter #1042 — Found that the retention of a condominium which was contributed to the bank by its dissolved holding company to be used for providing accommodations to the bank's auditors, consultants and certain customers or potential customers was permissible.
- Interpretive Letter #1043 — Found that a condominium contributed to a bank upon the dissolution of the bank's former holding company could be maintained by the bank and rented to third parties when it was not being utilized for bank purposes.
- Interpretive Letter #1044 — Held that a bank could develop a mixed-use building, which would include retail and restaurant space, office space, hotel space and condominiums. The bank planned to occupy approximately 25 percent of the available office space and to utilize approximately 10 percent of the hotel rooms for visiting employees, officers, directors and customers. In its decision, the OCC also gave weight to the fact that the proposed premises was an important part of a rejuvenation effort for the downtown area in which the facilities were to be built.
- Interpretive Letter #1045 — Held that a bank could construct and own a hotel to

lodge out-of-area bank employees, members of the bank's board of directors, selected vendors, shareholders and customers. Based on its projections, the bank would use more than 37.5 percent of the total rooms of the hotel on an annual basis with the remaining hotel rooms being available to the general public.

- Interpretive Letter #1048 — Permitted a bank in order to maximize the use of available tax credits to acquire approximately 70 percent of the equity interest of a limited liability company that would operate a wind energy project that produces electricity.

The National Association of Realtors takes the position that, in spite of the recent Interpretive Letter rulings by the OCC, banks should not be engaged in the mixing of both banking and commerce and intends to lobby Congress to ban the OCC from granting other banks the power to engage in real estate development projects.

Arkansas Wild Card Statute

Under the Arkansas Wild Card Statute, Arkansas Code Annotated § 23-47-101(c) and Regulation 47.101.3 of the Arkansas State Bank Department, the Arkansas Bank Commissioner may authorize Arkansas chartered banks to engage in any banking activity permitted to national banks, such as the types of real estate activities recently authorized by the Office of the Comptroller of the Currency for national banks.

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